Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

# APPENDIX

## In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1560

UNITED STATES OF AMERICA, *Petitioner*

v.

AMADO MARTINEZ-FUERTE, ET AL.

*On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit*

PETITION FOR CERTIORARI FILED JUNE 11, 1975
CERTIORARI GRANTED OCTOBER 6, 1975

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## Docket Entries
[No. 74-1350—Martinez-Fuerte]

| DATE | PROCEEDINGS |
|---|---|
| 7-3-74 | 1—#1&2—Ent ord and fld Ind. JS 2 Bond fixed at $1,500 (XX) (CORP) (CASH) |
| 6-25-74 | 2—Fld Complt; Def arr; Fed Def Apptd; Prelim Exam cont to 6-28-74 @ 9 am; Bail set @ $1,500 C/S or $1,500 P/S w/sig of prop owner or resp. person employ; w/verif; Gov't mot to commit MAT WIT granted; MAT WIT; David Moon, Jr. Apptd; Bail set @ $1,000 C/S; Bail review set @ 6-28-74 @ 9 am; (HARRIS) |
| 6-28-74 | 3—Prelim Exam cont to 7-3-74 @ 2 pm; MAT WITS, Bail affirmed @ $1,000 C/S, Bail review cont to 7-3-74 @ 2 pm, assgd to Judge Turrentine (H) |
| 6-28-74 | 4—Fld $1,500 C/S Bond posted this date; (RIC) (HARRIS) |
| 7-3-74 | 5—#1—Deft arr T/N & plea NG. Ent ord assigned to JUDGE TURRENTINE & cont to 7-8-74 @ 9 am for mots & trial settg; fld O.H. form; ord bail review as to mat wits affirmed & cont to 7-10-74 @ 9 am. (HARRIS) |
| 7-9-74 | 6—#1—Fld mot to shorten time; fld ord. (T) Fld not of mot for 7-10-74 @ 9 am & mot to suppress evid; fld P/A in suppt of mot t/w attachment & proof of serv by mail. |
| | 7—#1—Fld deft's mots re voir dire; fld deft's requested instructions. |
| 7-8-74 | 8—#1—Ent ord jury trial call for 7-10-74 @ 9 am; ord cont to 7-10-74 @ 9 am for mots. (T) |
| 7-11-74 | 9—Fld ord releasing & exon bond of 2 mat wits. (McCUE) c.c. to mars. |
| 7-10-74 | 10—#1—Bail review as to mat wits—ent ord affirmed & cont to 7-12-74 @ 9 am before Mag. McCue. (HARRIS) |

| DATE | PROCEEDINGS |
|---|---|
| | 11—#1—JURY TRIAL—Jurors impaneled & sworn. Swore wits, fld exh. Ent ord mot to supp evid denied; ord ctc 1, 4&5 dism w/prejudice; ord mot for J/S denied; ord cont to 7-11-74 @ 9 am for fur trial. (T) |
| 7-11-74 | 11—#1—FUR JURY TRIAL—Ent ord & fld verdict of G, cts 2&3; ord jurors polled; ord prob rept waived. Fld govt's requested instructions on 7-10-74. (T) |
| | 12—#1—Ent ord comm to cust AG on cts 2&3 conc for 3 yrs impr; ord purs to 18:3651 serv 6 mos JTI & exec of bal of sent susp & 5 yrs prob. (T) JS-3 |
| | 13—#1—Fld judgmt iss cys (Ent 7-11-74) |
| 7-11-74 | 14—#1—Fld NOTICE OF APPEAL; fld designation of record & fld ord permitting appeal in forma pauperis & apptd Defenders. (T) |
| | 15—#1—Fld $3,500 P/S bail bond on appeal posted 7-11-74. No abst of ord issd upon info from atty that deft not in cust. |
| 7-12-74 | 16—Ent ord matter placed off calendar as to bail review for mat wits, mat wits released 7-11-74. (McCUE) |
| 7-17-74 | 17—Fld reporters estimate of costs of transcript. (RUGGLES) |
| | 18—Ent ord reptr's trans in case #14964, USA vs Charles Earl Benson is to be fld in this case & made a part of record on appeal. (T) |
| *7-18-74 | ——Fld reptr's trans in case #14964 of 3 volumes, copies only. (RUGGLES) |
| 7-22-74 | ——Fld orig & 2 cys of rept'r trans of 7-10-74 & 7-11-74. (RUGGLES) |

DOCKET ENTRIES
[No. 74-1352—Jiminez-Garcia]

| DATE | PROCEEDINGS |
|---|---|
| 7-3-74 | 1—Ent ord and fld<br>Bond fixed at $2,000 (CORP) (CASH) |
| 6-25-74 | 2—Fld Complt; Def arr; Fed Def Apptd; Prelim Exam cont to 6-28-74 @ 9am; Bail set @ $2,000 C/S; (HARRIS) |
| 6-27-74 | 3—Gov't mot to commit mat wits granted; M.L. Cheryl Rhodes Apptd; Bail set @ $1,000 C/S; Bail review set @ 7-3-74 @ 2 pm; (HARRIS) |
| 6-28-74 | 4—Omnibus Hrg & Prelim Exam cont to 7-3-74 @ 2 pm; (HARRIA) |
| 7–3–74 | 5—Arr T/N & plea NG all cts—Ent ord bail review as to mat. wits. affirmed & cont to 7-10-74 @ 9 a.m.; ord assgd to JUDGE NIELSEN & cont to 7-8-74 @ 9 a.m. for mots or trial settg. (Harris) O.H. form fld. |
| 7-8-74 | 6—Ent ord Deft mot to orally join mot to dismiss fld in Mag Case #742592M,—Granted; ord mot submitted, cont to 7-22-74 @ 2 p.m. for ruling on mot & jury trial settg. (N) |
| 7-10-74 | 7—Bail Review as to mat. wits mod to $1,000P/S + sign of Las Angeles relatives; ord deposition w/out videotape of material witness (under Rule 15) cont to 7-17-74 @ 9 a.m. before Mag Bianchini; Deft counsel objects to deposition w/out videotape; AUSA objects to depositions; counsel for mta. wits. requests deposition. (Harris) |
| 7-17-74 | 8—Fld by Pltf—Order releasing & exoning bond of mat wits (1 mat. wit) |
| 7-17-74 | 9—Fld by Pltf—Stipulation re: calling of witnesses w/order attached thereto (Bienchini) |
| 7-17-74 | 10—Fld by Pltf—Order releasing & exoning bond of mat. wits (1 mat. wit) c.c. to Mars. |
| 7-17-74 | 11—Ent ord stipulation fld as to M.W.; ord M.W. released this date. (Bienchini) |

| DATE | PROCEEDINGS |
|---|---|
| 7-22-74 | 12—HRG MOTS—Ent ord mot to supp evid—Granted; ord mat wits rel; ord mot to dismiss indictment—Denied, ord cont to 10-8-74 @ 9 a.m. for jury trial. (N) |
| 7-23-74 | 13—BAIL REVIEW—Ent ord reduced to $2,000 P/S. (McCue) |
| 7-25-74 | 14—Fld $2,000 P/S bond posted 7-23-74. |
| 8-12-74 | 15—APPEAL by Pltf of Order granting Deft mot to suppress evid w/affid of Jeffrey F. Arbetman & affid of service. |
| 8-13-74 | ——Fld Reporter s Transcript of proceedings of 7-22-74 (Doroghy A. M. Albright OCR) |
| 8-14-74 | 16—Fld by Pltf—Designation of record on Appeal. |
| 8-15-74 | ——Fld Reporter's transcript of proceedings on 7-8-74 (Doroghy A. M. Albright OCR) |

## Docket Entries
[No. 74-1345—Guillen and Medrano-Barragan]

| DATE | PROCEEDINGS |
|---|---|
| 7-3-74 | 1—#1&2—Ent ord and fld Ind. JS 2<br>——#1—Bond Fixed at $2,500 (PS) & Cosigner<br>——#2— " " " $2,500 C/S |
| 7-1-74 | 2—Fld Complt; Defs arr; Prelim Exam cont to 7-8-74 @ 9 am: Plea NG (all counts); grand jury proc ord rec.<br>#1—Fed Def Apptd; Bail set @ $2,500 P/S + sig prop owner + proof;<br>#2—Elbert J. Boone Apptd; Bail set @ $2,500 C/S; (INF) |
| 7-2-74 | 3—MAT WITS: Gov't mot to commit mat wits granted; Robert Ripley Apptd Bail set @ $1,000 C/S; Bail review set for 7-8-74 @ 9 am; (INF) |
| 7-8-74 | 4—#1 & 2—Arr T/N & plea NG all cts—Ord set for O.H. for 7-11-74 @ 10 a.m.; ord assgd to JUDGE NIELSEN; ord bail review as to mat. wits. affirmed & cont to 7-11-74 @ 10 a.m. (Inf) |
| 7-5-74 | 5—Fld correspondence by atty Ripley to Magistrate. |
| 7-11-74 | 6—#1, 2—O. form fld by both; Ent ord Assgd to Judge NIELSEN 7-15-74 @ 9 am for Dispo or JTS. (INF) |
| 7-15-74 | 7—#1 & 2—LODGED & Fld stip. MOTS—Oral mot to suppress aliens—submitted; cont'd to 7-17-74 @ 1:30 p.m. for hrng ruling on mot & Bail Review & JTS. Ord mot wits released.<br>8—#1—Fld waiver of deft's presence.<br>9—#2—Fld waiver of deft's presence. |
| 7-16-74 | 10—#1&2—Fld ORD releasing & exonerating bond of mat wits (4), (McCUE) Issd c.c. of ORD to U.S. Mars. |
| 7-17-74 | 11—#1&2—Ent ord--Trial setting & ruling on submitted mots cont'd to 7-19-74 @ 1:30 p.m. (N) |

| DATE | PROCEEDINGS |
|---|---|
| 7-19-74 | 12—#1&2—MOTS—Ent ord hrng mot to supp evid—GRANTED as to all evid. Ordecontid' to 10-8-74 @ 9 a.m. for Jury Trial. (By Bond reduced to O/R/ (N) |
| | ——#2—Deft permitted to travel to Tijuana, Mexico. Ord deported. (N) |
| 7-19-74 | 13—#1—Fld Personal Recognizance ORD posted & approved on 7-19-74. (McCUE) |
| | 14—#2—Fld Personal Recognizance ORD posted & approved on 7-19-74, (McCUE) |
| 7-30-74 | ——#1&2—Fld Reporter's Transcript of Proceedings (Orig. +2) |
| 8-9-74 | 15—#1&2—Fld MOT OF APPEAL by pltf on Judge's ORD granting deft's mot to suppress evid entered on 7-19-74. Fld affidt of JEFFREY F. ARBETMAN t/w affidt of svc by mail thereto. |
| 8-19-74 | 16—#1&2—Fld pltf's Designation of Record on Appeal. |

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
May 1974 Grand Jury

| | |
|---|---|
| UNITED STATES OF AMERICA, *Plaintiff*, v. AMADO MARTINEZ-FUERTE, JOHN DOE, *Defendants*. | No. 74 1350 Criminal<br>INDICTMENT<br>Title 18, U.S.C., Sec. 371; Title 8, U.S.C., Sec. 1324—Conspiracy to Transport and Induce Illegal Entry of Aliens; Title 8, U.S.C., Sec. 1324(a)(2)—Illegal Transportation of Aliens; Title 8, U.S.C., Sec. 1324(a)(4)—Inducing Illegal Entry of Aliens |

The grand jury charges:

COUNT ONE

Beginning at a date unknown to the grand jury and continuing up to and including June 24, 1974, in the Southern District of California, defendant(s) AMADO MARTINEZ-FUERTE and JOHN DOE and others unknown, unlawfully, willfully and knowingly did combine, conspire, and agree together and with each other, and with divers other persons unknown to the grand jury to violate certain laws of the United States, to wit, to violate Title 8, United States Code, Section 1324.

It was a part of the said conspiracy that the defendant(s) and others would willfully and knowingly encourage and induce, and attempt to encourage and induce, directly and indirectly, the entry into the United States of aliens not lawfully entitled to enter or reside within the United States.

It was further a part of the said conspiracy that the defendant(s) and others would, intentionally and knowingly, bring into the United States alien(s) not duly admitted

by an immigration officer and not lawfully entitled to enter or reside within the United States, and attempts so to do.

It was further a part of the said conspiracy that the defendant(s) and others would willfully and knowingly conceal, harbor and shield, and attempt to conceal, harbor and shield from detection, such aliens referred to in the above paragraph.

It was further a part of the said conspiracy that the defendant(s) and others would transport and move, and attempt to transport and move, aliens within the United States by means of transportation and otherwise, knowing them to be in the United States in violation of law, and in furtherance of such violation of law, and knowing or having reasonable grounds to believe that their last entry into the United States occurred less than three years prior thereto.

## OVERT ACT(S)

In pursuance of the said conspiracy, and to further the objects thereof, the following overt act, among others, was committed in the Southern District of California:

1. On or about June 25, 1974, defendant AMADO MARTINEZ-FUERTE drove a vehicle in the Southern District of California.

2. On or about June 24, 1974, defendant AMADO MARTINEZ-FUERTE met with codefendant JOHN DOE in San Ysidro, California, within the Southern District of California

## COUNT TWO

On or about June 24, 1974, within the Southern District of California, defendants AMADO MARTINEZ-FUERTE and JOHN DOE, knowing that an alien, namely,

JUANA PEREZ-PEREZ

was then in the United States in violation of law and, having reasonable grounds to believe that said alien's entry into the United States occurred less than three years prior to the aforesaid date, did transport and move, and attempt to transport and move, said alien within the United States, in furtherance of such violation of law, in violation of Title 8, United States Code, Section 1324(a)(2).



## COUNT THREE

On or about June 24, 1974, within the Southern District of California, defendants AMADO MARTINEZ-FUERTE and JOHN DOE knowing that an alien, namely,

Ernestina Martinez-Sanchez

was then in the United States in violation of law and, having reasonable grounds to believe that said alien's entry into the United States occurred less than three years prior to the aforesaid date, did transport and move, and attempt to transport and move, said alien within the United States, in furtherance of such violation of law, in violation of Title 8, United States Code, Section 1324(a)(2).

## COUNT FOUR

Title 8, U.S.C., Sec. 1324(a)(4)

On or about June 24, 1974, defendant(s) AMADO MARTINEZ-FUERTE and JOHN DOE wilfully and knowingly encouraged and induced, and attempted to encourage and induce, the entry into the United States at a place near San Ysidro, California, within the Southern District of California, from Mexico, of

JUANA PEREZ-PEREZ

an alien, who was not lawfully entitled to enter and reside within the United States, and thereafter, said defendant was first found in the Southern District of California; in violation of Title 8, United States Code, Section 1324(a)(4).

## COUNT FIVE

Title 8, U.S.C., Sec. 1324(a)(4)

On or about June 24, 1974, defendant(s) AMADO MARTINEZ-FUERTE and JOHN DOE wilfully and knowingly encouraged and induced, and attempted to encourage and induce, the entry into the United States at a place near San Ysidro, California, within the Southern District of California, from Mexico, of

ERNESTINA MARTINEZ-SANCHEZ

an alien, who was not lawfully entitled to enter and reside within the United States, and thereafter, said defendant

was first found in the Southern District of California; in violation of Title 8, United States Code, Section 1324(a)(4).

A TRUE BILL:
/s/ HOWARD C. BRIGGS
Foreman

Harry D. Steward
*United States Attorney*

by /s/ DONALD F. SHANAHAN
Donald F. Shanahan
*Asst. U.S. Attorney*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
May 1974 Grand Jury

| | |
|---|---|
| UNITED STATES OF AMERICA, *Plaintiff*, v. JOSE JIMINEZ-GARCIA, *Defendant*. | No. 74 1352 Criminal<br>INDICTMENT<br>Title 18, U.S.C., Sec. 371; Title 8, U.S.C., Sec. 1324—Conspiracy to Transport Alien; Title 8, U.S.C., Sec. 1324 (a)(2) — Illegal Transportation of Alien |

The grand jury charges:

COUNT ONE

Beginning at a date unknown to the grand jury and continuing up to and including June 24, 1974, in the Southern District of California, defendant JOSE JIMINEZ-GARCIA and other persons unknown to the grand jury unlawfully, willfully and knowingly did combine, conspire, and agree together and with each other, and with divers other persons unknown to the grand jury to violate certain laws of the United States, to wit, to violate Title 8, United States Code, Section 1324.

It was a part of the said conspiracy that the defendant(s) and others would willfully and knowingly encourage and induce, and attempt to encourage and induce, directly and indirectly, the entry into the United States of aliens not lawfully entitled to enter or reside within the United States.

It was further a part of the said conspiracy that the defendant(s) and others would, intentionally and knowingly, bring into the United States an alien not duly admitted by an immigration officer and not lawfully entitled to enter or reside within the United States, and attempt so to do.

It was further a part of the said conspiracy that the defendant(s) and others would willfully and knowingly conceal, harbor and shield, and attempt to conceal, harbor and shield from detection, such aliens referred to in the above paragraph.

It was further a part of the said conspiracy that the defendant(s) and others would transport and move, and attempt to transport and move, aliens within the United States by means of transportation and otherwise, knowing them to be in the United States in violation of law, and in furtherance of such violation of law, and knowing or having reasonable grounds to believe that their last entry into the United States occurred less than three years prior thereto.

## OVERT ACT(S)

In pursuance of the said conspiracy, and to further the objects thereof, the following overt act, among others, was committed in the Southern District of California:

On or about June 24, 1974, defendant JOSE JIMINEZ-GARCIA transported Alfonso Torres-Leon, an illegal entrant alien, in a vehicle in the Southern District of California.



## COUNT TWO

On or about June 24, 1974, within the Southern District of California, defendant JOSE JIMINEZ-GARCIA knowing that an alien, namely,

ALFONSO TORRES-LEON

was then in the United States in violation of law and, having reasonable grounds to believe that said alien's entry into the United States occurred less than three years prior to the aforesaid date, did transport and move, and attempt to transport and move, said alien within the United States, in furtherance of such violation of law, in violation of Title 8, United States Code, Section 1324(a)(2).

A TRUE BILL:
/s/ HOWARD C. BRIGGS
Foreman

Harry D. Steward
*United States Attorney*

by /s/ DONALD F. SHANAHAN
Donald F. Shanahan
*Asst. U.S. Attorney*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
May 1974 Grand Jury

| | |
|---|---|
| UNITED STATES OF AMERICA,<br>*Plaintiff,*<br><br>v.<br><br>RAYMOND RANGEL GUILLEN,<br>FERNANDO MEDRANO-BARRAGAN,<br>*Defendants.* | No. 74 1345 Criminal<br>INDICTMENT<br>Title 18, U.S.C., Sec. 371; Title 8, U.S.C., Sec. 1324—Conspiracy to Transport and Induce Illegal Entry of Aliens; Title 8, U.S.C., Sec. 1324(a)(2)—Illegal Transportation of Aliens; Title 8, U.S.C., Sec. 1324(a)(4)—Inducing Illegal Entry of Aliens |

The grand jury charges:

COUNT ONE

Beginning at a date unknown to the grand jury and continuing up to and including June 28, 1974, in the Southern District of California, defendant(s) RAYMOND RANGEL GUILLEN and FERNANDO MEDRANO-BARRAGAN and others unknown, unlawfully, willfully and knowingly did combine, conspire, and agree together and with each other, and with divers other persons unknown to the grand jury to violate certain laws of the United States, to wit, to violate Title 8, United States Code, Section 1324.

It was a part of the said conspiracy that the defendant(s) and others would willfully and knowingly encourage and induce, and attempt to encourage and induce, directly and indirectly, the entry into the United States of aliens not lawfully entitled to enter or reside within the United States.

It was further a part of the said conspiracy that the defendant(s) and others would, intentionally and knowingly, bring into the United States alien(s) not duly admitted by an immigration officer and not lawfully entitled to enter or reside within the United States, and attempt so to do.





It was further a part of the said conspiracy that the defendant(s) and others would willfully and knowingly conceal, harbor and shield, and attempt to conceal, harbor and shield from detection, such aliens referred to in the above paragraph.

It was further a part of the said conspiracy that the defendant(s) and others would transport and move, and attempt to transport and move, aliens within the United States by means of transportation and otherwise, knowing them to be in the United States in violation of law, and in furtherance of such violation of law, and knowing or having reasonable grounds to believe that their last entry into the United States occurred less than three years prior thereto.

OVERT ACT(S)

In pursuance of the said conspiracy, and to further the objects thereof, the following overt act, among others, was committed in the Southern District of California:

1. On or about June 28, 1974, defendant RAYMOND RANGEL GUILLEN drove a vehicle within the Southern District of California.

2. On or about June 28, 1974, defendant FERNANDO MEDRANO-BARRAGAN entered the United States within the Southern District of California.

COUNT TWO

On or about June 28, 1974, within the Southern District of California, defendants RAYMOND RANGEL GUILLEN and FERNANDO MEDRANO-BARRAGAN knowing that an alien, namely,

CANDELARIO CAMPOS-MADRID

was then in the United States in violation of law and, having reasonable grounds to believe that said alien's entry into the United States occurred less than three years prior to the aforesaid date, did transport and move, and attempt to transport and move, said alien within the United

States, in furtherance of such violation of law, in violation of Title 8, United States Code, Section 1324(a)(2).

COUNT THREE

On or about June 28, 1974, within the Southern District of California, defendants RAYMOND RANGEL GUILLEN and FERNANDO MEDRANO-BARRAGAN knowing that an alien, namely,

MIGUEL ANGEL ESTRADA-ESPINOSA

was then in the United States in violation of law and, having reasonable grounds to believe that said alien's entry into the United States occurred less than three years prior to the aforesaid date, did transport and move, and attempt to transport and move, said alien within the United States, in furtherance of such violation of law, in violation of Title 8, United States Code, Section 1324(a)(2).

COUNT FOUR

On or about June 28, 1974, within the Southern District of California, defendants RAYMOND RANGEL GUILLEN and FERNANDO MEDRANO-BARRAGAN knowing that an alien, namely,

MARCOS PENA-AISPURO

was then in the United States in violation of law and, having reasonable grounds to believe that said alien's entry into the United States occurred less than three years prior to the aforesaid date, did transport and move, and attempt to transport and move, said alien within the United States, in furtherance of such violation of law, in violation of Title 8, United States Code, Section 1324(a)(2).

COUNT FIVE

On or about June 28, 1974, within the Southern District of California, defendants RAYMOND RANGEL GUILLEN and FERNANDO MEDRANO-BARRAGAN knowing that an alien, namely,

TERESA ESQUEDA-VELASCO

was then in the United States in violation of law and, having reasonable grounds to believe that said alien's entry into the United States occurred less than three years prior to the aforesaid date, did transport and move, and attempt



to transport and move, said alien within the United States, in furtherance of such violation of law, in violation of Title 8, United States Code, Section 1324(a)(2).

COUNT SIX

Title 8, U.S.C., Sec. 1324(a)(4)

On or about June 28, 1974, defendant(s) RAYMOND RANGEL GUILLEN and FERNANDO MERRANO-BARRAGAN wilfully and knowingly encouraged and induced, and attempted to encourage and induce, the entry into the United States at a place near San Ysidro, California, within the Southern District of California, from Mexico, of Candelario Campos-Madrid an alien, who was not lawfully entitled to enter and reside within the United States, and thereafter, said defendant(s) were first found in the Southern District of California; in violation of Title 8, United States Code, Section 1324(a)(4).

COUNT SEVEN

Title 8, U.S.C., Sec. 1324(a)(4)

On or about June 28, 1974, defendant(s) RAYMOND RANGEL GUILLEN and FERNANDO MEDRANO-BARRAGAN wilfully and knowingly encouraged and induced, and attempted to encourage and induce, the entry into the United States at a place near San Ysidro, California, within the Southern District of California, from Mexico, of

MIGUEL ANGEL ESTRADA-ESPINOSA

an alien, who was not lawfully entitled to enter and reside within the United States, and thereafter, said defendant(s) were first found in the Southern District of California; in violation of Title 8, United States Code, Section 1324(a)(4).

COUNT EIGHT

Title 8, U.S.C., Sec. 1324(a)(4)

On or about June 28, 1974, defendant(s) RAYMOND RANGEL GUILLEN and FERNANDO MEDRANO-BARRAGAN wilfully and knowingly encouraged and induced, and attempted to encourage and induce, the entry into the United States at a place near San Ysidro, Cali-

fornia, within the Southern District of California, from Mexico, of

MARCOS PENA-AISPURO

an alien, who was not lawfully entitled to enter and reside within the United States, and thereafter, said defendant(s) were first found in the Southern District of California; in violation of Title 8, United States Code, Section 1324(a)(4).

COUNT NINE

Title 8, U.S.C., Sec. 1324(a)(4)

On or about June 28, 1974, defendant(s) RAYMOND RANGEL GUILLEN and FERNANDO MEDRANO-BARRAGAN wilfully and knowingly encouraged and induced, and attempted to encourage and induce, the entry into the United States at a place near San Ysidro, California, within the Southern District of California, from Mexico, of

TERESA ESQUEDA-VELASCO

an alien, who was not lawfully entitled to enter and reside within the United States, and thereafter, said defendant(s) were first found in the Southern District of California; in violation of Title 8, United States Code, Section 1324(a)(4).

A TRUE BILL:
/s/ HOWARD C. BRIGGS
Foreman

Harry D. Steward
*United States Attorney*

by /s/ DONALD F. SHANAHAN
Donald F. Shanahan
*Asst. U.S. Attorney*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

| | |
|---|---|
| UNITED STATES OF AMERICA, *Plaintiff,* v. JOSE JIMINEZ-GARCIA, *Defendant.* | Criminal No. 74-1352LN STIPULATION |

IT IS HEREBY STIPULATED by and between the Plaintiff, United States of America, through its counsel of record, and the defendant, JOSE JIMINEZ-GARCIA, through his counsel of record, Robert Boles, as follows:

1. That if Border Patrol Agents McKinlay and Winn were called as witnesses they would testify as follows:

a) That on June 24, 1974, the defendant was the driver of a 1968 Chevrolet which was stopped at the San Clemente checkpoint; that one male alien was riding in the front seat of the vehicle the defendant was driving.

2. That if ALFONSO TORRES-LEON were called as witness he would testify as follows:

a) That he is a citizen of Mexico without any legal right to be in the United States.

b) That he made arrangements with an unknown person in Tijuana to be smuggled into the United States and transported to Los Angeles. That on June 24, 1974, he was guided across the border and to 108 Smythe Street in San Ysidro, California, where he stayed in a room attached to the garage of the residence at that address. That later that day he walked about half a block from the residence where he got into the vehicle which the defendant was driving, and was transported by the defendant north to the point of their apprehension at the San Clemente, California checkpoint.

3. That the above-named alien witness may be released from custody and returned to Mexico, and that this stipulation may be entered into evidence in lieu of his testimony.

4. That this stipulation is being entered into freely and

voluntarily and the defendant understands that he is waiving his right to confront and cross-examine the above-named witness at the motion hearing and trial of this case.

DATED: July 17, 1974

Respectfully submitted

Harry D. Steward
*United States Attorney*

Stephen G. Nelson
*Assistant U. S. Attorney*
*Chief, Criminal Division*

/s/ R. Michael Bruney
R. Michael Bruney
*Assistant U. S. Attorney*

Attorneys for Plaintiff
United States of America

Jose Jiminez-Garcia
Jose Jiminez-Garcia
*Defendant*

Robert Boles
Robert Boles
*Attorney for Defendant*

IT IS SO ORDERED.
DATED: 7/17/74

/s/ Victor E. Bianchini
*United States Magistrate*

United States District Court
Southern District of California

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| United States of America,<br>*Plaintiff,*<br><br>v.<br><br>Raymond Rangel Guillen and Fernando Medrano-Barragan,<br>*Defendants.* | Criminal Case No. 74-1345 N<br><br>Magistrate's Docket No. 74-2549M<br><br>STIPULATION |

IT IS HEREBY STIPULATED by and between plaintiff, United States of America, and the defendants, Raymond Rangel Guillen and Fernando Medrano-Barragan, through their respective attorneys of record the Federal Defenders of San Diego, Inc. and Mr. Albert J. Boone, that if the following persons were called to testify they would testify to the following:

1. Mr. Candelario Campos-Madrid states the following:

(i) That he was born in Durango, Mexico and is currently thirty years of age.

(ii) That he lived in Tijuana for one year working as a painter before meeting an unidentified man in Tijuana with whom he made arrangements to be transported to the Los Angeles area for financial consideration.

(iii) That he crossed the border at a beach with two other men and were following a young man later identified as Fernando Medrano-Barragan aka Alfonso Magana-Delgado and a young woman.

(iv) That after they reached a highway in the United States a car arrived and he and the two other men entered the trunk of the vehicle; the trunk being opened by the person later identified as Raymond Rangel Guillen aka Raymond Sanchez-Sanchez.

(v) He would further testify that he had $1.00 on his possession when apprehended, that he has no family in this country, nor has he any papers which entitle him to enter this county. Further, that he made his entry into the United States at a place other than designated by the

Immigration Service by crossing at the beach area near Tijuana, B.C. Mexico.

2. Mr. Marcos Pena-Aispuro states the following:

(i) That he was born in Durango, Mexico and is forty-five years of age.

(ii) That he travelled to Tijuana approximately twenty-two days prior to his arrest on 28 June 1974 and was unable to secure employment.

(iii) During this period of time in Tijuana he met a man near the central bus station who said that he would transport Mr. Pena to Los Angeles if Mr. Pena would pay him $200.00 after reaching Los Angeles. Arrangements were made that this unidentified man would meet him on the United States side of the border but never did. Mr. Pena walked through the hills at night following man who the person he had made his arrangements with told him to follow. This man was later identified as being Fernando Medrano-Barragan aka Alfonso Magana-Delgado who was travelling with a young lady. After reaching a highway Mr. Pena was placed in a trunk by a person later identified as Raymond Rangel Guillen aka Raymond Sanchez-Sanchez and did not leave the trunk of the vehicle until apprehended by the border patrol agents at the San Clemente check-point. Mr. Pena would further state that he did not know any of the persons who set up the arrangements or the other passengers.

(iv) Mr. Pena testifies that he is a citizen of Mexico and has no legal papers with which to enter the United States and entered on 28 June 1974 by entering the United States at a place other than designated by the United States Immigration Service i.e., at the beach at Tijuana, B.C. Mexico.

3. Teresa Esqueda-Velasco testifies:

(i) That she is eighteen years of age and a citizen of Mexico born in Guadalupe Jalisco.

(ii) She would further testify that she married Fernando Medrano-Barragan aka Alfonso Magana-Delgao on 27 June 1974.

(iii) She would further state that she did not know if her husband made prearrangements and knew nothing about any arrangements if any were made.

(iv) That she was awoken out of her wedding bed by another person who asked if they wanted to make a try at entering the United States. Her husband got out of bed and went to talk to the friend and then told her to dress and they took a bus from downtown Tijuana to the beach area, walked across the border at the beach, met other friends, and they all walked across a highway.



(v) Miss Esqueda then fell asleep by the side of the road- and the next thing she knew a car pulled up and she was getting into the vehicle with her husband in the front seat next to her.

(vi) Teresa Esqueda-Valasco would testify that she has no legal papers which would enable her to enter the United States legally, and that her entry was made at a place other than designated by the Immigration Service in the early morning hours of 28 June 1974.

4. It is further stipulated that Miguel Angel Estrada-Espinosa is a citizen of Mexico with no legal papers authorizing him to be in the United States. That he entered the United States at a place other than designated by the U. S. Immigration Service by crossing in the beach area at Tijuana, B.C. Mexico in the early hours of June 28, 1974, with Marcos Pena-Aispuro and Candelario Campos-Madrid.

SO STIPULATED:

Harry D. Steward
*United States Attorney*

/s/ Jeffrey F. Arbetman
Jeffrey F. Arbetman
*Assistant United States Attorney*
Attorney for Plaintiff United States of America

/s/ Raymond Rangel-Guillen
Raymond Rangel-Guillen

/s/ Michael McCabe
Michael McCabe
*Federal Defenders of San Diego, Inc.*
Attorney for Raymond Rangel-Guillen

/s/ Fernando Medrano-Barragan
Fernando Medrano-Barragan

/s/ ALBERT J. BOONE
Albert J. Boone
Attorney for Fernando Medrano-Barragan

SO ORDERED: JULY 15, 1974
/s/ LELAND C. NIELSEN
Honorable Leland C. Nielsen
*District Court Judge*
Southern District of California

[Excerpts from Suppression Hearing in No. 74-2462 (Martinez-Fuerte)]

SAN DIEGO, CALIFORNIA; WEDNESDAY, JULY 10, 1974; 10.45 A.M.

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(The following proceedings held in chambers.)

THE COURT: May the record reflect we are in chambers.

The defendants in this case were arraigned on Monday of this week. Today is the day set for trial, and the Court at that time set a motion to suppress, for the hearing to be before the trial this morning. Both counsel have filed briefs with me, which I have read on the question of quashing the subpoenas, or the special warrant, or what do we call those, Mr. Sevilla?

MR. SEVILLA: Well, I think the issue, for all intents and purposes today, is whether or not that warrant is valid, and whether or not the stop which occurred in this case, and the inspection that occurred because of that warrant, and based on that warrant, and it's our contention that that is what the government relies upon to justify the stop at San Clemente in this case; and that since the warrant, in our opinion, is invalid, that the stop was illegal, and the fruit of the subsequent inspection is also tainted.

THE COURT: You are satisfied with the brief you filed to set forth your position in this matter?

MR. SEVILLA: Yes.

THE COURT: And the government?

MR. MEYERS: Your Honor, I think that the brief of the pleadings we filed were in answer to the brief in the Dora Soto case. I think it is the same brief the defense filed, and if that is so, we are satisfied with our response.

THE COURT: I take it you don't wish to make any argument on it?

MR. PETERSON: Additionally, for the record in this case, I would like to, with the Court's permission, file additional documents which support the warrant of inspection.

One is an affidavit which was submitted by Robert D. McCord, who was the Assistant Chief Patrol Agent, and who filed an affidavit in support of the warrant of inspection issued by Magistrate Infante on June 22nd of this year.

The second is also another affidavit by Robert D. McCord in support of that warrant of inspection.

The third was an affidavit filed by Richard Wischkaemper, who is the Assistant Regional Commissioner of the Border Patrol, and that affidavit was filed in support of the warrant of inspection.

Additionally there was an affidavit signed by Gene E. Harris, who was the Patrol Agent in Charge of the San Clemente Border Patrol checkpoint, who filed an affidavit; and if I'm wrong, Mr. Meyers will correct me, was filed giving the results of the warrant of inspection at the traffic checkpoint.

MR. MEYERS: That is correct.

THE COURT: I can hear you.

MR. PETERSON: And, also, the warrant of inspection itself, which was issued by Magistrate Infante.

And, lastly, is the return of the warrant, which was signed by Gene E. Harris, the Agent in Charge at San Clemente.

I ask that they be filed as part of this case.

THE COURT: Do you wish to respond, Mr. Sevilla?

MR. SEVILLA: I would ask if there was a copy of the actual warrant itself. We would submit it.

MR. PETERSON: Yes. That is included. I mentioned that.

MR. MEYERS: Also, I might add that the Magistrate stated in the warrant that he relied on these affidavits that Mr. Peterson just referred to, plus he relied on the actual certified transcript of the hearings before your Honor in the Baca case.

I have asked the reporter today to provide me with another copy of the full transcript to lodge it with the Court as an exhabit. I'm sure your Honor has a copy. I thought it would be more convenient in case there was an appeal in this case to have a full certified transcript filed in the record.

THE COURT: Very well. Mr. Peterson, you may file the documents. They will be made part of the record.

Mr. Sevilla, if you have any answering documents you wish to file, I'll permit you to file those to perfect your record.

MR. SEVILLA: I think that the warrant itself, and the affidavits, which were before the Magistrate when he issued the inspection warrant, should be filed with the Court.



I would object to any material that is extraneous to what materials the Magistrate had before him when he issued this inspection warrant, because the warrant is going to rise or fall based upon the materials that were before the Magistrate at the time he issued it; and, so, that would probably take into account any responsive affidavits or returns, and I would object to those being entered.

THE COURT: Your objection is noted. They will be filed for whatever——

MR. SEVILLA: Also, then——

THE COURT: —purpose they may serve.

MR. SEVILLA: With respect to the Baca hearing transcript, if the transcripts are to be admitted, I would then ask, also, that all exhibits filed in that case be filed, submitted for appellate purposes, as well as in that hearing——

MR. MEYERS: Well, I'm not sure I have any objection. It seems inconsistent with what Mr. Sevilla just said. He wants to limit the evidence to what the Magistrate had in front of him. I'm not sure he had the exhibits in front of him.

THE COURT: Let's leave that to another day. The defendants haven't been convicted. There may not be an appeal, and if they are convicted, and there is an appeal, I'll hear you further on what should be filed.

MR. SEVILLA: Your Honor, I would state that in arguing to support my motion, that this innovative procedure that has been inaugurated by the United States Attorney's Office and Magistrate Infante is just that there is no precedence for it. As I pointed out in my points and authorities, there is even a question whether the Magistrate has the authority to issue "an animal labeled inspection warrant," and the Supreme Court recently, just two weeks ago, expressly limited the authority of Magistrates to go beyond the bounds of what was actually delegated to the Magistrate by statute or local rule.

So, I would object to, of course, the warrant on that grounds; and with respect to the Baca opinion, which the Magistrate relied upon, I would submit that the recent decisions of the Ninth Circuit have overruled Baca; and we just received one this morning, United States versus Laura Elena Esquer-Rivera.

THE COURT: Was it one of my cases?

MR. SEVILLA: It was consolidated at the Baca hearing.

In this they held that the Ocotillo checkpoint was not shown to be located at a functional equivalent of the border, and is not a functional equivalent of the border.

In the footnote they indicate the ruling of Baca, although, "in Baca the District Court for the Southern District of California held that the Ocotillo checkpoint, as well as all other immigration checkpoints operated within the Southern District, were at functional equivalents of the border. The Baca opinion, however, was written without the benefit of our later decision in Bowen."

The Ninth Circuit has overruled whatever authority the Magistrates had in relying upon the Baca opinion or finding.

THE COURT: I think, counsel, the Magistrate was relying on Baca, not the ultimate results, but the statistics that were contained therein, and this is a question that will no doubt be decided by the Supreme Court. We have to get it on its way, if you are both satisfied with your record.

MR. SEVILLA: I would say that no doubt your Honor is correct. The appellate court will be deciding the ultimate issue in this case. I just think it is wrong for my client to bear the burden, should he be convicted at this jury trial, to go forward with the appeal. The government has inaugurated this otherwise illegal procedure, but for the inspection warrant, affidavits, and evidence, and should have the burden of taking it on appeal. I don't think my client should have the burden of going through the jury trial now, and then having the evidence come in, which would or should be suppressed, and then going through with an appeal to the Ninth Circuit.

The government has a remedy under Title 18, Section 3731, to appeal within thirty days of your Honor's ruling suppressing the evidence, because it is deemed an illegal stop. I don't think my client should bear the burden. The government has inaugurated this unlawful instrument into the laws, and therefore should have the burden of sustaining it. I don't think they came close in this case.

THE COURT: Well, that is what we are going to find out, Mr. Sevilla.

I'll deny your motion, and we will proceed with the trial.

I understand that you are being compensated under the Criminal Justice Act. Your client is not out any dollars from his own pocket, only the taxpayers'.



MR. MEYERS: Could I ask a question of Mr. Sevilla. The question I have, in the pleadings one of the arguments that you make is that the Magistrate does not have the power to issue such a warrant. Do you mean to say that a judge, federal judge could issue such a warrant, or neither a judge or a Magistrate could issue such a warrant?

MR. SEVILLA: I'm not going to give an advisory opinion of what the judge can do.

MR. MEYERS: You can tell us what your argument is.

MR. SEVILLA: We will find it out in the Ninth Circuit. In the Ninth Circuit it will not be whether Judge Turrentine or Justice Powell can, the issue will be whether the Magistrate, whose duties are solely limited to state and local rule, can issue such an inspection warrant. So, I'll defer any opinion on that issue.

I would like one thing to be done, and that is I think the government should stipulate that the stop in this case was due to the inspection warrant so that there is no question on appeal that the issue is precisely framed.

THE COURT: Mr. Peterson. Mr. Meyers.

MR. MEYERS: I think the government will stipulate that there was no evidence that would support a founded suspicion, but I think the government will still maintain we had a statutory right to stop the vehicle, and in addition, we had a legally authorized warrant.

THE COURT: Well, that answers the question. There was no founded suspicion as such. They were relying on the statutory right and the inspection warrant.

MR. SEVILLA: So Mr. Meyers is saying that you are relying on the statutory authority which you were found not to have in the various decisions such as Bowen, Juarez-Rodriguez, Brignoni-Ponce?

MR. MEYERS: This Circuit and in other circuits, they have found a statutory right even without a warrant, and in this situation we had a warrant.

THE COURT: It will be interesting to see, seven to six one way or the other.

* * * * * *

MR. PETERSON: Your Honor, further, after assessing the evidence that the government is going to present in its case in chief, I would move to dismiss the counts of the indictment that have to do with inducing the illegal entry of the aliens in this case. I don't recall the actual——

THE COURT: Mr. Sevilla has a copy of the indictment.

MR. SEVILLA: That would be Counts Four and Five.

MR. PETERSON: I would move to dismiss those two counts, Four and Five.

THE COURT: I assume Mr. Sevilla has no objection.

MR. SEVILLA: As long as they are dismissed with prejudice, your Honor, I have no objection.

MR. PETERSON: I have no objection to them being dismissed with prejudice.

THE COURT: Very well. They are so dismissed.

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[Excerpts from Suppression Hearing in
No. 74–2680 (Jimenez-Garcia)]

SAN DIEGO, CALIFORNIA, MONDAY, JULY 8, 1974, AT 3:00 P.M.

THE CLERK: No. 13 on calendar, Case No. 74–1352, United States of America v. Jose Jiminez-Garcia, for motion setting.

40 on calendar, United States of America v. Fermin Rayas-Melendez, Guadalupe Gonzalez-Valenzuela, Lucia Ayala-Perez; for filing consent, filing information, arraignment and plea, and hearing motions and jury trial setting.

MR. MANGAN: Frank Mangan, Federal Defenders on behalf of Jose Jiminez-Garcia. He's now present in court in custody.

MR. CLEARY: John Cleary, Federal Defenders, on behalf of the defendants Fermin Rayas-Melendez, Guadalupe Gonzalez-Valenzuela, and Lucia Ayala-Perez.

MR. MCKESSON: Charles B. McKesson for defendant Dora Soto, who's present in court.

THE CLERK: That will be 41 on calendar, Case No. 74–1300 for further proceedings.

MR. MANGAN: Your Honor, for the record, in the Jiminez case, we're joining orally in the motions that were filed by the Federal Defenders Office on behalf of the material witnesses. Our motions would be identical.

THE COURT: Very well. You may so join.

Do you have anything to add to your previous matter, Mr. McKesson?

MR. MCKESSON: Your Honor, I received a half hour ago the twenty-four-page memo of the government. I have read it and I would have a comment or two thereon, but I'm sure that when the Court does have an opportunity to read it, at that time it might be more appropriate.

THE COURT: I have glanced through it also.

Do you have anything to add, Mr. Meyers, to your Memorandum?

MR. MEYER: I don't believe so, your Honor. I think this case has become a weighty matter in more than one way and I think our pleadings fully cover both sides of the question.

THE COURT: Mr. Cleary?

MR. CLEARY: There were just two small points that I would just briefly remark on in response to the government's pleadings.

First, as somewhat of a Freudian slip, Footnote 1, in the sense that we in the law practice, we lawyers are bound by the rulings of judges and judges of the district courts are bound by the rulings of the Courts of Appeal, and although it is nice to speculate as to the ultimate outcome in the government's efforts to overrule Brignoni, Ponce—and in that respect as an advocate, I can respect their reference—however, I cannot ask them to ask this Court to deviate from the established precedents of this Circuit.

Further, I would point out to the Court a very anomalous situation in which Justice White dissented in the Wade and Gilbert cases, but in Kirby v. Illinois he dissented and he said:

> Although I dissented in Wade and Gilbert, I am bound by that precedent and am now dissenting from the Courts' erosion of counsel in preindictment situations.

The second point I would make is that although the magistrate and counsel in counsel for the government's request is ingenious in the sense of trying to create a warrant that doesn't otherwise exist, I would point out that we neither have statutory authority nor modification of Rule 41(c) to justify the provision here. Therefore, under the existing precedents, I feel that the Court has no other choice before it and I speak to the precedents of our history in the sense of the Fourth Amendment, Supreme Court precedents, and the precedents of the Ninth Circuit.

MR. MEYERS: Your Honor, I think the position of the government is not that we're asking this Court to review the Ninth Circuit decisions that have been handed down in the last sixty days. I think basically what our motion is, is quite simple. We're just asking this Court to follow the suggestion of Justice Powell in Almeida-Sanchez which was concurred in by the four dissenting judges and, as Mr. Justice White—as Mr. Cleary mentioned his name—said in Almeida-Sanchez: I agree with Mr. Justice Powell that such a warrant would satisfy the Fourth Amendment, and I would expect such warrants would be readily issued.

Well, I don't know how readily this warrant was issued.



I know it's been issued and it's been issued on probable cause, and I think that when you have five——

THE COURT: On alleged probable cause.

MR. MEYERS: We would like to submit we do think we do have probable cause here and our basic position is that when five judges of the Supreme Court have told us what their view is, that I'm sure they just don't write these views to be overlooked in the future. They are writing these views in order to give us guidance, and I think the guidance here is for us to take the course that we have taken, and I think that the overwhelming problem in this district and in Southern California as a whole regarding the great illegal alien problem is such that Mr. Justice Powell will be, I think, most ready to vote with Mr. Justice White and affirm this warrant.

THE COURT: Mr. McKesson?

MR. MCKESSON: Your Honor, the difficulty with the government's position based on a return to the warrant and all of the other material therein is that it attempts to justify a previously unheard of device by the facts found afterwards. In effect it's saying that the end justifies the means; that's the long and the short of the matter.

Furthermore, the government has suggested that the claim of defendants, now defendants plural, that the government's application for the issuance of this warrant is an attempt to get around, to sneak around the clear holdings of the Ninth Circuit, as Mr. Cleary pointed out. The government says that is a frivolous argument. I frankly see nothing frivolous in it whatsoever. It's a very serious argument. As Mr. Cleary pointed out, there's no statutory authority for this kind of warrant whatsoever. It is conceivable that Justice Powell in his concurring opinion to Almeida-Sanchez, joined in by the dissenting votes as to the result—it is not clear from the dissent whether all four Justices were in concurrence with this warrant procedure outlined by Justice Powell, but it is conceivable, I'd point out, that what Justice Powell was suggesting was that, as with every other kind of administrative point as in Camera and See, there could be enabling legislation enacted and I would submit to the Court that that would be the proper method for the government if it so desired to pursue. Then, if enabling legislation were enacted, the government could challenge that legislation, or the defendants would challenge

that legislation, depending on the circumstances, and then it would be properly before the Court. But merely to manufacture out of whole cloth or to resurrect a writ of assistance of general warrant on an obiter dictum statement in a concurrent opinion seems to me to be beyond the pale and clearly unconstitutional.

THE COURT: Well, I think all you gentlemen know how I feel personally about the Almeida-Sanchez decision and the Ninth Circuit ones, and Bowen, Peltier, and Brignoni, Ponce. I think they are all wrong except Peltier, but I'm really concerned very much about this situation having to follow those decisions and, not having had the opportunity to go over the government's opposition in anything more than the most brief way, these motions are all taken under submission and they'll be decided not later than the 22d. But I just don't feel at this time that I can decide them without an opportunity to study at length the government's position.

As indicated, at the moment by inclination is to grant the motions, but having in mind that I am completely in sympathy with the end which the government seeks, it's difficult for me to say that the means they have used are completely outside the pale, so the motions are all under submission.

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SAN DIEGO, CALIFORNIA, MONDAY, JULY 22, 1974, AT 2:00 P.M.

THE CLERK: No. 48 on calendar, Case No. 74–1352, United States of America v. Jose Jimenez-Garcia, ruling on motions and jury trial setting.

MR. SEVILLA: Charles Sevilla, Federal Defenders, for Jose Jimenez-Garcia, who should be present in custody.

Your Honor, I believe the stipulations as to the testimony of the witnesses has already been filed.

THE COURT: That's right, so your motion to suppress is granted and the matter is set for trial October 8.

Isn't that the day I set the others?

MR. SEVILLA: I'm not sure.

THE CLERK: Yes, your Honor.

THE COURT: October 8, so that the government may take their appeal before that time.



MR. SEVILLA: Thank you, your Honor.

THE CLERK: Is the motion to dismiss continued until then?

THE COURT: It is denied.

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[Excerpts from Suppression Hearing in
No. 74–2714 (Guillen and Medrano-Barragan)]

SAN DIEGO, CALIFORNIA, MONDAY JULY 15, 1974, AT 3:25 P.M.

THE CLERK: No. 5 on calendar, Case No. 74–1345, United States of America v. Raymond Rangel Guillen and Fernando Medrano-Barragan for disposition or jury trial setting.

MR. MCCABE: Michael McCabe, Federal Defenders for Rangel Guillen, who is in custody.

MR. BOONE: Elbert Boone for Medrano-Barragan, who's in custody.

MR. MCCABE: Both defendants are now before the Court.

At this time, your Honor, we would move orally to suppress the aliens that were found in the search here and I would ask to incorporate by reference the Points and Authorities filed by defense counsel and by our office in the case of United States v. Nora Soto which is before the Court.

I believe Mr. Arbetman will stipulate that the only grounds for the stop and search of the vehicle in this case was the aerial search warrant.

THE COURT: Warrant of detention. Warrant of inspection.

MR. ARBETMAN: So stipulated.

We will stipulate that there was a search warrant in existence at the time of this case for the checkpoint at San Clemente.

MR. BOONE: I will word my motion to suppress all fruits of the search from the stop.

THE COURT: All right. The stipulation may be filed at this point.

All right. The motions are taken under advisement at this point.

* * * * * *

MR. MCCABE: I want to state for the record that it's our understanding that the stipulation will only be used in the event that either the Court denies the motion, or that the Court's ruling in granting the motion is overruled on appeal.





THE COURT: That's right.

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SAN DIEGO, CALIFORNIA, FRIDAY, JULY 19, 1974, AT 1:30 P.M.

THE CLERK: No. 2 on calendar, Case 74–1345, United States of America v. Raymond Rangel Guillen and Fernando Medrano-Barragan, ruling on motions, jury trial setting, and bail review.

MR. MCCABE: Michael McCabe, Federal Defenders, for Raymond Rangel Guillen who's present in court.

MR. BOONE: Elbert Boone for Medrano-Barragan, who's present in custody.

THE COURT: Mr. Boone, have you and your client signed that stipulation as far as the testimony is concerned?

MR. BOONE: Yes, your Honor.

THE COURT: I thought you had but I couldn't remember.

MR. BOONE: We did that Monday.

THE COURT: I thought you had.

I should say in that regard that I think that the United States Supreme Court was wrong as far as Almeida Sanchez is concerned, and that the Ninth Circuit in their en banc opinion in Bowen was wrong, and I have no sympathy at all with their rulings which I must follow, and as far as the warrant of inspection is concerned, I don't think that the government is in a better position now than they were before that so-called aerial search warrant was secured.

As a side issue, I think that there's a real question as to whether the Magistrate has any authority other than that directly given to him, but I'm not making my decision on those grounds. I'm making my decision on the fact or on the grounds that, following the ruling of the Ninth Circuit in Bowen, Peltier, Brignoni and Ponce, and that of the United States Supreme Court in Almeida-Sanchez, there's a violation of the Fourth Amendment in the mere stop at the San Clemente check station.

I should again say that I think that the Ninth Circuit was wrong when they decided Bowen. I agree with Judge Turrentine in his decision in United States v. Baca where he found that the San Clemente check station was a functional equivalent of the border, but I feel impelled and compelled by the decisions of the Circuit in Bowen and by

that of the Supreme Court in Almeida-Sanchez, to say that there was no authority for the stop.

Therefore, all evidence in the case is ordered suppressed.

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[Excerpts from Trial Transcript in No. 74–2462 (Martinez-Fuerte)]

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CORNELIUS NUNN,

called as a witness on behalf of the plaintiff, was sworn, testified as follows:

THE CLERK: Please take the witness stand. State your name, and spell your last name for the record.

THE WITNESS: My name is Cornelius Nunn, N-u-n-n.

DIRECT EXAMINATION

BY MR. PETERSON:

Q. Mr. Nunn, how are you employed?

A. I'm a Border Patrol Agent. San Clemente, California.

Q. And how long have you been in the Border Patrol?

A. Approximately fourteen months, sir.

Q. Prior to that time, what did you do? Were you in law enforcement?

A. No. I was a career officer in the Air Force.

Q. All right. I see. These last fourteen months that you have been in the Border Patrol, have you been at San Clemente during this period of time?

A. Since September of last year.

Q. Since September. All right. Directing your attention, sir, to June 24th of this year, were you on duty on that day?

A. Yes, sir.

Q. Where were you working?

A. I was working on the checkpoint at San Clemente.

Q. All right. At approximately 8:00 o'clock in the morning—evening, where, specifically, were you working?

A. I was in the secondary inspection area.

Q. All right. Where is the secondary inspection area?

A. It's on the side of Interstate 5 on the northbound lane.

Q. All right. And since there is a secondary inspection area, I'll ask you this, is there a primary inspection area?

A. Yes, sir. The primary inspection area is the center of the highway. One agent stands in the center of the highway, inspects traffic, directs certain cars to the secondary

inspection at the side of the road for a more thorough inspection.

Q. All right. At approximately 8:00 o'clock in the evening, who was on primary? Do you recall?

A. Agent Brantley was on the primary area.

Q. All right. Did you see, at approximately 8:00 p.m., Agent Brantley refer to you a 1973 Capri automobile?

A. Yes, sir.

Q. All right. How did he do that? Do you recall seeing that?

A. He motioned with his left hand, and pointed to the secondary area.

Q. All right. Did the car head in your direction?

A. Yes, sir.

Q. All right. What happened when the car arrived at your location?

A. The car stopped. I approached the car from the driver's side, and spoke to the driver, and—to determine his citizenship.

Q. All right. Do you see the driver of that automobile here in the courtroom?

A. Yes, sir.

MR. SEVILLA: I will stipulate to the identity, your Honor.

THE COURT: Very well. Proceed.

BY MR. PETERSON:

Q. All right. What questioning did you ask of him?

A. I asked the driver what his citizenship was. I spoke to him first in English. He didn't seem to understand. I spoke to him in Spanish. I asked him his citizenship. He indicated to me that he was an immigrant. I asked him to show me his papers, which he did.

Q. What did he show you?

A. He showed me an I–151 card, which is what we call a mica.

Q. All right. What does that I–151 card entitle a person to do?

A. This is proof that the person is a legal immigrant in the United States, and with that he has the same rights as a citizen to go and come, and work, and so on.

Q. Do you know what an I–186 card is?

A. Yes, sir.



Q. What is an I–186 card?

A. An I–186 is a local card that is issued to Mexican citizens so that they may come into the United States for a distance of twenty-five miles or up to seventy-two hours.

Q. And at the end of the seventy-two hours, what happens?

A. At the end of the seventy-two hours they have to return to Mexico, unless they get a permit to travel otherwise.

Q. I see. All right. Was there anyone else in the automobile?

A. Yes, sir. Two ladies in the automobile.

Q. Where were they seated?

A. One in front and one in back.

Q. Did you ask them for their citizenship?

A. Yes, sir; I did.

Q. And what was their reply?

A. They indicated to me they were Mexican citizens. I asked them for their papers, if they had papers, and they indicated to me they did not have papers to be in the country legally.

Q. And at that point what, if anything, did you do?

A. At that point I arrested the driver, advised him of his rights.

Q. All right, what did you do with the passengers in the automobile?

A. I left the passengers in the automobile until they were—we took the car over to the office about a hundred yards from the highway. At that point the passengers were taken inside along with the driver into the office.

Q. All right. Now, did you notice—happen to notice the passengers' physical demeanors while they were in the automobile?

A. When the car first pulled up, the passengers appeared tense, were looking straight ahead, more or less. They wouldn't look directly at me until I spoke to them directly.

MR. PETERSON: Nothing further.

MR. SEVILLA: No questions.

THE COURT: You may stand down.

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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|---|---|
| UNITED STATES OF AMERICA<br>v.<br>AMADO MARTINEZ-FUERTE | No. 74-1350—<br>Criminal |

On this 11th day of July, 1974 came the attorney for the government and the defendant appeared in person and by counsel, Charles Sevilla of Federal Defenders.

IT IS ADJUDGED that the defendant upon his plea of not guilty and a verdict of guilty has been convicted of the offense of illegal transportation of aliens, in violation of 8 USC 1324(a)(2), as charged in counts 2 and 3 of the indictment in 5 counts and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that on counts 2 and 3 to run concurrently the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of THREE YEARS provided, however, pursuant to 18 USC 3651 as amended that said defendant shall be confined in a jail-type or treatment institution for a period of SIX months, and that execution of the remainder of said sentence is suspended and the defendant placed on probation for a period of FIVE years, on condition that he obey all laws, Federal, State and Municipal, and that he comply with all lawful rules and regulations of the Probation Department, and that he not enter Mexico nor approach the Mexican border without permission of the Probation Department.

IT IS ORDERED that the defendant shall remain on his present bond pending appeal.

IT IS ORDERED that the Clerk deliver a certified copy of

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Footnotes omitted





this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ Howard B. Turrentine
HOWARD B. TURRENTINE
*United States District Judge*
Filed: July 11, 1974
WILLIAM W. LUDDY
Clerk
By /s/ Richard I. Bellman
RICHARD I. BELLMAN
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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|---|---|
| IN THE MATTER OF AN APPLICATION BY THE UNITED STATES OF AMERICA FOR AN INSPECTION WARRANT FOR THE IMMIGRATION AND NATURALIZATION SERVICE TO OPERATE A FIXED TRAFFIC CHECKPOINT ON INTERSTATE ROUTE 5 FIVE MILES SOUTH OF SAN CLEMENTE, CALIFORNIA | APPLICATION FOR INSPECTION WARRANT |

COMES NOW the United States of America in application for a warrant of inspection for the operation of the fixed checkpoint at San Clemente, California, operated by the U. S. Border Patrol. This application is based on the attached affidavits of Robert D. McCord and Richard Wischkaemper and the evidence presented in *United States v. Baca*, Case No. 14656, heard before the Honorable Howard B. Turrentine on November 19, 20 and 21, 1973, and the findings of fact as reported in *United States v. Baca*. 368 F. Supp. 398 (S.D. Cal. 1973).

/s/ Harry D. Steward
HARRY D. STEWARD
*United States Attorney*



STATE OF CALIFORNIA }
COUNTY OF SAN DIEGO } ss.

AFFIDAVIT

ROBERT D. McCORD, being first duly sworn, deposes and says:

1. I am an Assistant Chief Patrol Agent assigned to the Chula Vista Sector of the United States Border Patrol. I have been employed with the Border Patrol continuously since 1957, except for an eight year period when I was assigned as an investigator with the United States Immigration and Naturalization Service. In the course of my duties I have been assigned in various locations in Texas, Florida, and California. In my present capacity I share responsibility with the Chief Patrol Agent in the administration of the sector and the operations engaged in by 250 officers and 50 auxiliary employees.

2. A key function in our basic strategy is the establishment of highway checkpoints at locations beyond 25 miles from the border, utilizing topographical features and extended highways to permit visual examination of the maximum amount of traffic with a minimum incursion and inconvenience upon the public. The location of the checkpoints are correlated along the entire border and provide an effective secondary line of defense.

3. The existence of the checkpoints is a matter of common knowledge in Mexico and Central America to those persons engaged in the soliciting of persons to be smuggled into the interior United States. Officers in the United States Embassy in El Salvador submitted an official intelligence report through the State Department channels precisely locating the checkpoints in San Clemente and Temecula, California, on the basis of information furnished them by covert sources in El Salvador. Those sources further volunteered the information that admission at the Port of Entry was relatively safe, but clearance through the highway checkpoints presented a hazard. The existence of these traffic checkpoints, therefore, are considered a deterrent to those who would attempt to illegally enter this country from south of our border. Additionally, interviews conducted with illegal aliens apprehended from Central Amer-

ica confirm their knowledge of the highway checkpoints.

4. Attached are Exhibits 1 through 17 revealing that 8,440 aliens were apprehended at the San Clemente checkpoint during the first five months of 1973 and 7,718 during the first five months of 1974, and a total of 16,863 for the calendar year 1973.

5. Based upon statistics maintained by the California Division of Highways, 1,200 cars pass through the checkpoint during an average hour.

6. At the traffic checkpoint located south of San Clemente, California, we stop approximately 50 vehicles during each hour of operation for limited inspection consisting of inquiring of the occupants of the vehicle as to their citizenship status.

7. The average car is detained for questioning of the occupants approximately three to five minutes.

8. The purpose of the inspection at the checkpoint is to intercept those aliens who have successfully penetrated the border or who have violated the terms of the legal admission by proceeding beyond the 25 mile limitation without documentation. The resulting action by the U. S. Border Patrol is to arrange a voluntary departure of any illegal aliens located in lieu of deportation, in all but a miniscule number of cases. Less than 3% of all aliens apprehended at the checkpoint are prosecuted under the criminal provisions of the immigration laws.

9. The bulk of the action taken is enforcement regarding violations of the 25 mile limitation on holders of temporary border passes, I-186 cards (see 8 C.F.R. § 212.6) and apprehension of those aliens who have entered the United States without inspection in violation of 8 U.S.C. § 1325.

10. Illegal entry of aliens within the Chula Vista sector area of responsibility is increasing at an alarming rate, estimated to be approximately 40,000 entries per month.

11. The major purpose of entry is to secure employment, with 95% of all illegal entrants destined for the Los Angeles area or the central portion of California. All illegal aliens apprehended are interviewed. Through sector apprehension reports it has been determined that the vast majority are in travel to interior points such as Los Angeles, and the San Joaquin Valley of California and further, have been in the United States for a short period of time.



12. Some few of the illegal entrants leave the immediate San Diego area by commercial airline, freight train, or passenger train. The vast majority use motorized vehicles and proceed up Interstate Routes 5 or 395, or State Highway 79. Approximately 70% of all illegal alien travellers traverse Interstate Route 5.

13. The checkpoint at San Clemente is located adjacent to the truck scales maintained by the State of California, with the San Onofre State Park and the Pacific Ocean on the West and Camp Pendleton Marine Corps base to the East. It is 68 miles north of the International Boundary and five miles south of the city limits of San Clemente, California. Circumventing the checkpoint is extremely difficult because of the military patrols at Camp Pendleton and the presence of the State Park rangers between the highway and the ocean.

14. The checkpoint at San Clemente is a permanent structure and is intended to remain in operation 24 hours a day, seven days a week. We are unable to maintain the checkpoint in operation continuously because of safety factors that deteriorate because of inclement weather and traffic in excess of 2,500 cars per hour. We are also unable to maintain the checkpoint because of limitations in manpower available for assignment as well as the basic allocation to that function. The checkpoint is in operation approximately 60% of the time during the year.

15. Smugglers of aliens and those aliens travelling with prior knowledge of the checkpoint customarily wait for the checkpoint to become inactive, for any of the above reasons, before attempting to continue up the highway. This again demonstrates the deterrent effect which the checkpoints have on the traffic in illegal aliens.

16. I have read the opinion of District Court Judge Turrentine in the case of *United States v. Baca,* District Court Number 14656, and to the best of my knowledge the factual findings in regard to the illegal alien problem, the law enforcement problem, and his analysis of the operation of individual traffic checkpoints are correct.

17. A "drop house" is a staging area to keep illegal aliens awaiting inclement weather or, any event that might cause the checkpoint to close down temporarily. Experience has shown when the traffic checkpoint is in operation for

extended periods of time those "drop houses" are utilized by smugglers of aliens. We have found a number of such "houses" located in Oceanside, California, south of the San Clemente checkpoint, which have contained up to 86 aliens at a time.

/s/ Robert D. McCord
ROBERT D. MCCORD

Subscribed to before me and sworn to in my presence on 6-21-74.

/s/ Edward A. Infante
UNITED STATES MAGISTRATE

STATE OF CALIFORNIA }
COUNTY OF SAN DIEGO } ss.

## AFFIDAVIT

ROBERT D. McCORD, being first duly sworn, deposes and says:

1. I am Assistant Chief Border Patrol Agent assigned to the Chula Vista sector of the United States Border Patrol.

2. On June 22, 1974, I reviewed the certified reporter's transcript of the sworn testimony of Deputy Chief Border Patrol Agent Richard E. Bathelor (Chula Vista sector) given in the case of *U. S. v. Baca, et. al.*, before the Honorable Howard B. Turrentine, U.S. District Judge, on November 20 and 21, 1973, and to the best of my knowledge his testimony reflects the current state of affairs existing in regard to the enforcement of the immigration laws of the United States in this sector and in the Southwestern part of the United States as a whole.

3. On June 20, 1974, Deputy Chief Border Patrol Bathelor reviewed his testimony in *U.S. v. Baca* and reaffirmed that the testimony was correct to the best of his knowledge.

4. I adopt Agent Batchelor's testimony as a correct statement of the facts as I know them.

/s/ Robert D. McCord
ROBERT D. MCCORD

Subscribed to before me and sworn to in my presence on 6-22-74.

/s/ Edward A. Infante
UNITED STATES MAGISTRATE

STATE OF CALIFORNIA }
COUNTY OF SAN DIEGO } ss.

## AFFIDAVIT

RICHARD WISCHKAEMPER, being first duly sworn, deposes and says:

1. I am the Assistant Regional Commissioner, Border Patrol, for the Southwest Region of the U. S. Immigration and Naturalization Service, encompassing the entire Mexican border and as such direct the enforcement operations of the Border Patrol for the Regional Commissioner.

2. During the period July–May of fiscal year 1974, 554,188 deportable aliens have been located by the Border Patrol, in this region alone, of whom 55,515 were located in traffic checking operations.

3. In addition, the great majority of 7,021 smugglers of aliens and 74,708 smuggled aliens were intercepted at such checkpoints.

4. The above figures have increased approximately 30% over fiscal year 1973.

5. Traffic checking operations have contributed significantly to the interception of the illegal aliens destined to the interior of the United States and to the overall impact of Border Patrol enforcement operations aimed at discouraging the illegal entry of aliens.

6. The information contained in *United States v. Baca,* District Court Number 14656, outlines problem areas which will continue to proliferate at an even more rapid rate unless Border Patrol traffic checking operations can be continued.

7. Various estimates have been made as to the total number of deportable aliens presently in the United States ranging from 800,000 to 5,000,000. While such figures must be based on speculation, the mere fact that over 450,000 deportable aliens were located in the southwestern United States in fiscal year 1973, and that figure will increase approximately 30% in fiscal year 1974, supports a reasonable conclusion that over a million deportable aliens are in the country and that that number will increase unless Border Patrol operations can be more effective, including the traffic checking operations.





8. Discontinuation of the above operations would have a significantly adverse affect on the overall control of illegal entry and smuggling of aliens, and add further to the economic, social and health problems outlined in *United States v. Baca, supra.*

/s/ Richard Wischkaemper
RICHARD WISCHKAEMPER

Subscribed to before me and sworn to in my presence on 6-21-74.

/s/ Edward A. Infante
UNITED STATES MAGISTRATE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
(HON. EDWARD A. INFANTE)

IN THE MATTER OF AN APPLICATION BY THE UNITED STATES OF AMERICA FOR AN INSPECTION WARRANT FOR THE IMMIGRATION AND NATURALIZATION SERVICE TO OPERATE A FIXED TRAFFIC CHECKPOINT ON INTERSTATE ROUTE 5 FIVE MILES SOUTH OF SAN CLEMENTE, CALIFORNIA

No. 399 Misc.

WARRANT OF INSPECTION

TO: Any authorized officer of the Immigration and Naturalization Service including any agent of the U.S. Border Patrol:

Application having been made by the United States for a warrant of inspection for the operation of a fixed checkpoint at San Clemente, California, and having reviewed and considered the affidavits of Robert D. McCord and Richard Wischkaemper, and having reviewed and considered the findings made by the United States District Court in *United States v. Baca*, 368 F.Supp. 398 (S.D. Cal. 1973) and having reviewed and considered a copy of the certified reporter's transcript of the sworn testimony of Deputy Chief Border Patrol Agent Richard E. Batchelor presented in the *Baca* case,

I am satisfied that there is probable cause to believe that mass violations of the Immigration laws of the United States (Title 8, United State Code) have been and are being committed at a point known as the Border Patrol checkpoint on the northbound lanes of Interstate Highway Route 5, approximately five miles south of San Clemente, California.

Wherefore, YOU ARE HEREBY COMMANDED:

(1) to conduct an immigration traffic checkpoint on the northbound lanes of Interstate Route 5, five miles south of San Clemente, California, and;

(2) to stop northbound motor vehicles for the purpose





of making routine inquiries to determine the nationality and/or immigration status of the occupants of said vehicles, and;

(3) to conduct a routine inspection of said vehicles for the presence of aliens, and;

(4) since the flow of alien traffic occurs at all hours of the day, and since limited operation of the traffic checkpoint would tend to defeat its purpose, the operation of this checkpoint may be conducted at any time of day or night, and;

(5) a copy of the warrant shall be displayed in a conspicuous manner at the checkpoint location and upon request, shall be given to any person detained.

(6) The Immigration and Naturalization Service shall file a written return on this warrant containing the following:

A. The approximate number of vehicles passing through the checkpoint during the hours of operation;

B. The approximate number of vehicles stopped for questioning concerning citizenship status;

C. The number of vehicles inspected;

D. The number of vehicles in which aliens were discovered;

E. A recapitulation of the total number of deportable aliens apprehended;

F. An inventory of any property seized.

(7) This warrant shall be returned within ten days of this date, as required by law.

Dated this 22nd day of June, 1974.

/s/ Edward A. Infante
UNITED STATES MAGISTRATE

## Return of Warrant Issued June 22, 1974 for the San Clemente Checkpoint

Since 4:00 p.m. on Saturday, June 22 through approximately 11:00 p.m. on Sunday, June 30, 1974, the activity at the traffic checkpoint operated by the Border Patrol, south of San Clemente, California, has been as follows:

A. The checkpoint was operated for a total of 124 hours and 10 minutes during which 145,960 vehicles passed through the checkpoint;

B. 820 vehicles were stopped at the checkpoint for questioning;

C. 202 vehicles were inspected;

D. Aliens were found in 171 vehicles;

E. 725 deportable aliens were apprehended in the vehicle stopped at this checkpoint;

F. No property was seized.

I swear that the above information is a true and detailed account of the operation of the Border Patrol Checkpoint south of San Clemente, California.

/s/ Gene E. Harris

Subscribed and sworn to and returned before me this 1st day of July, 1974.

/s/ Edward A. Infante
UNITED STATES MAGISTRATE



STATE OF CALIFORNIA }
COUNTY OF SAN DIEGO } ss.

## AFFIDAVIT

GENE E. HARRIS, being first duly sworn, deposes and says:

1. I am the Patrol Agent in Charge at the San Clemente Border Patrol traffic check facility. I have been employed with the Border Patrol in the southwest for 23 years. I am responsible for the operations engaged in by 33 agents.

2. From 4:00 p.m. on Saturday, June 22 through approximately 11:00 p.m. on Sunday, June 30, 1974, an estimated 145,960 vehicles passed through the San Clemente traffic checkpoint during the 124 hours and ten minutes of operation during this period. We had 820 vehicles referred to secondary at the traffic checkpoint for questioning regarding nationality and/or citizenship. We inspected 202 vehicles. We found deportable aliens in 171 vehicles. In 169 of these vehicles aliens were in plain view to the officers in secondary. In 33 cases the agents at secondary inspected portions of the vehicles in which concealed aliens could be secreted. In all 33 instances we had the permission and consent of the driver. Of these 33 vehicles inspected deportable aliens were found in two instances. Therefore deportable aliens were found in 171 vehicles referred to secondary with the total number of deportable aliens apprehended during the 124 hours and ten minutes of operation amounting to 725. See Exhibit A.

3. In two instances vehicles referred to secondary by the officers accelerated from the checkpoint necessitating a high speed chase to overtake the driver. One case proceeded for 15 miles before being successfully stopped by the California Highway Patrol. This car contained an illegal alien driver and four other illegal aliens. The second case terminated in a wreck at the Magdelena off-ramp and I-5 at San Clemente. The driver, an illegal alien, was injured and required hospitalization, and seven illegal aliens were removed from this vehicle.

4. During this time period an additional 172 illegal aliens were received from other law enforcement agencies. These aliens were apprehended as a result of the checkpoint being

in operation and the aliens attempting to evade the checkpoint by walking around and were observed and arrested in the state park area adjacent to the checkpoint upon arrival in the San Clemente city limits or by the California Highway Patrol observing them getting out of vehicles south of the checkpoint or by the military police encountering aliens walking around the marine base to avoid the checkpoint.

/s/ Gene E. Harris
GENE E. HARRIS

Subscribed to before me and sworn to in my presence on July 1, 1974.

/s/ Edward A. Infante
UNITED STATES MAGISTRATE

| 1974 Date | A | B | C | D | E | Shift & No. Hrs. Open |
|---|---|---|---|---|---|---|
| 6/22 | 9840 | 120 | 17 | 17 | 45 | 4P–10P (6 hrs.) |
| 6/23 | 7500 | 26 | 6 | 1 | 1 | 10A–1P (3 hrs.) |
| 6/24 | 1200 | 45 | 10 | 9 | 36 | 2A–8A (6 hrs.) |
| " | 11,000 | 14 | 9 | 4 | 7 | 8A–4P (8 hrs.) |
| " | 7400 | 95 | 8 | 8 | 27 | 5:30P–11:45P (6 hrs.) |
| 6/25 | 1100 | 40 | 16 | 16 | 85 | 2A–6A (4 hrs.) |
| " | 11,300 | 31 | 9 | 6 | 34 | 8A–4P (8 hrs.) |
| " | 7100 | 38 | 9 | 9 | 13 | 6P–Mid (6 hrs.) |
| 6/26 | 1700 | 30 | 7 | 2 | 27 | 3A–8A (5 hrs.) |
| " | 9500 | 20 | 5 | 4 | 7 | 10A–3P (5 hrs.) |
| " | 7300 | 43 | 8 | 8 | 21 | 4:30P–11:45P (7 hrs.) |
| 6/27 | 1800 | 45 | 22 | 20 | 125 | 12:30A–7:30A (7 hrs.) |
| " | 9000 | 25 | 8 | 9 | 60 | 10A–2P (4 hrs.) |
| " | 5600 | 15 | 5 | 6 | 41 | 6P–Mid (6 hrs.) |
| 6/28 | 4680 | 60 | 7 | 4 | 18 | Mid–8A (8 hrs.) |
| " | 11,420 | 28 | 9 | 9 | 35 | 10A–3P (5 hrs.) |
| " | 6000 | 15 | 2 | 0 | 0 | 7P–11P (4 hrs.) |
| 6/29 | 1245 | 13 | 8 | 8 | 34 | 2A–7A (5 hrs.) |
| " | 12,000 | 36 | 9 | 5 | 15 | 9A–3P (6 hrs.) |
| " | 6800 | 26 | 3 | 3 | 16 | 7P–11P (4 hrs.) |
| 6/30 | 1200 | 16 | 15 | 15 | 56 | 1A–6A (5 hrs.) |
| " | 9375 | 34 | 10 | 8 | 21 | 9A–2:30P (5½ hrs.) |
| " | 1900 | 5 | 0 | 0 | 0 | 10P–10:40P (40 mins.) |
| | 145,960 | 820 | 202 | 171 | 725 | 124 hours 10 minutes |

A*—Number of vehicles passing through checkpoint
B*—Number of vehicles stopped for questioning
C—Number of vehicles inspected
D—Number of vehicles in which aliens discovered
E—Number of deportable aliens apprehended

*Approximate number

STATE OF CALIFORNIA }
COUNTY OF SAN DIEGO } ss.

## AFFIDAVIT

ROBERT D. McCORD, being first duly sworn, deposes and says:

1. I have reviewed the affidavits that I executed on June 21 and 22, 1974, and I believe that the information contained in these affidavits still reflect the actual state of affairs that exist in enforcement of the Immigration laws in the Southern District of California and in the southwestern United States as a whole.

2. Since approximately 4:30 p.m. on Saturday, June 22, 1974, through approximately 8:00 a.m. on Friday, June 28, 1974, the activity at the traffic checkpoint operated by the Border Patrol south of San Clemente, California, has been as follows:

A. The checkpoint was operated for a total of 89 hours;

B. During this period an estimated 96,020 vehicles passed through the checkpoint during these hours of operation;

C. 647 motor vehicles were stopped at the checkpoint;

D. 146 vehicles were inspected;

E. Aliens were found in 123 vehicles;

F. 548 deportable aliens were apprehended in the vehicles stopped at this checkpoint.

/s/ Robert D. McCord
ROBERT D. McCORD

Subscribed to before me and sworn to in my presence on 6-28-74.

/s/ Edward A. Infante
UNITED STATES MAGISTRATE



SUPREME COURT OF THE UNITED STATES

No. 74-1560

United States,
*Petitioner,*

v.

Amado Martinez-Fuerte et al.

ORDER ALLOWING CERTIORARI. Filed October 6, 1975

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

☆ U.S. Government Printing Office: 1975—596-967/111